

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

### REMARKS

Reconsideration is respectfully requested.

Claims 1 through 10 and 26 through 33 remain in this application.  
Claim 34 has been cancelled. No claims have been withdrawn or added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

#### Paragraph 2 of the Office Action

Claims 30 through 32 have been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

In the §112 rejection of claims 30 through 32 in the Office Action, it is stated that

It is not understood what direction is considered "forward" and "rearward". Applicant must make the direction and position relative to the structure or an axis (X-axis or Y-axis). Are "forward" and "rearward" relative to the edges of the label structure, or relative to a front layer and a back layer? Furthermore, it is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Applicant must clarify in further detail.

Although it is believed that the rejected claims as originally presented are not indefinite, to advance the case beyond this recurring issue, the claims have been amended to explicitly state what is believed to be implicit in the recitation of the claims. More particularly, claim 30 has been amended to require "a base panel forming the back surface of the label structure for affixing to a surface" and "a laminating layer forming the front surface of the label structure and overlying the base panel". Claims 31 and 32 have each been amended to require "wherein the laminating layer forms the front surface of the label structure and the base panel forms the back surface of the label structure".

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

The above amendments to the claims are believed to clarify the requirements of the rejected claims, especially the particular points identified in the Office Action.

Withdrawal of the §112 rejection of claims 30 through 32 is therefore respectfully requested.

**Paragraph 3 of the Office Action**

Claims 1 through 7, 9 and 31 through 33 have been rejected under 35 U.S.C. §102(b) as being anticipated by Rankin et al (6,447,862) (hereinafter "Rankin").

Claim 1 requires, in part, that "the laminating layer *contacts both* the second leaflet and the first leaflet" (emphasis added). As noted in the present application (and the previous responses), this relationship between the laminating layer and the first and second leaflets functions to secure both of the first and second leaflets to the base layer through the laminating layer, and thus avoids having to rely upon other structures, such as mechanical fasteners, to hold the first and second leaflets to the base layer. The use of these other structures generally complicates the label assembly process and increases the cost of the label.

In the rejection of claim 1 in the Office Action, it is alleged that the Rankin patent discloses "the laminating layer is adhered (not directly adhered and contacting) to a portion of the first and second leaflet" (emphasis added). Thus, it appears that it is conceded in the Office Action that the Rankin patent does not disclose any direct contact between the laminate 18 of Rankin (interpreted in the Office Action as the laminating layer of claim 1) and the nested pamphlet panel of Rankin (labeled as 16e by the Examiner and interpreted in the Office Action as the second pamphlet of claim 1)

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

However, it is clear to one of ordinary skill in the art that the laminate 18 of Rankin does not have any contact with the nested pamphlet panel 16e of Rankin. Figure 3 of the Rankin patent clearly indicates to one of ordinary skill in the art that the laminate 18 does not *contact* the nested pamphlet 16e at any point, and to the contrary, the Rankin patent clearly teaches the interposition of the pamphlet panel 16a between the any and all of the pamphlet panels 16b - 16n and the laminate 18. This is a completely opposite relationship to that required by the language of claim 1. Further, Figure 3 of Rankin shows, and the descriptive text of Rankin explicitly states, that

The pamphlet panels 16a - 16n are attached together by one or more staples 19 at a multi-layer fold 21 in the pamphlet 16.

As noted above, one of the benefits of the claimed invention is the ability to avoid having to use mechanical fastening means (such as staples) to connect the leaflets together. In contrast, the Rankin label structure needs to rely upon one or more staples to hold the pamphlet panels together precisely because the laminate 18 in Rankin does not contact both the pamphlet panel 16d and 16e. Thus, the Rankin patent is a prime example of the problem that is overcome by the claimed structure.

It appears from the cursory statements in the Office Action with respect to this requirement that the Patent Office is attempting to interpret the term "contact" between two elements as being satisfied by contact by each of the elements with a third element, without any direct contact between the two stated elements. However, it is submitted that this interpretation is not supported by the understanding of those skilled in the art. It is noted that the MPEP section 2111 places the following limitation on the "broadest reasonable interpretation" made by the Patent Office (underline emphasis added):

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468  
(Fed. Cir. 1999)

and further states (underline emphasis added):

During examination, the claims must be interpreted as broadly as their terms reasonably allow. \*\*\* This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)

It is submitted that the interpretation of the Rankin patent as teaching "contact" between the laminate 18 and the pamphlet panel 16e is not reasonable, as it requires an interpretation of "contact" that is outside the plain meaning of "contact". The Office Action does not state what definition of "contact" is being relied upon in the rejection, such as what definition of "contact" allows for a third element (such as pamphlet panel 16d) to be completely interposed in between two elements that are allegedly in "contact". The statements in the rejection of the Office Action appears to suggest that the Patent Office believes that there is two types of contact possible between elements--"direct contact" and "indirect contact". However, applicant can find no definition of "contact" that would support such an interpretation, and "indirect contact" would seem to be an oxymoron of two terms that have conflicting meanings. If the rejection of claim 1 is maintained on the basis of the Rankin patent, it is requested that the Examiner provide a definition of the plain meaning of "contact" that supports the "indirect contact" interpretation.

It is therefore submitted that the Rankin patent would not lead one of ordinary skill in the art to the requirements of claim 1, particularly the "contact" requirement of claim 1. Further, claims 2 through 7, 9, and 31 through 33, which depend from claim 1, are also submitted to be allowable and in condition for allowance.

Further, claim 31 requires "wherein the laminating layer forms the front surface of the label structure and the base panel forms the back

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

surface of the label structure, and wherein the second leaflet does not extend rearwardly of the first leaflet when in a closed condition". The nested pamphlet panels of the Rankin patent does not disclose this relationship.

Claim 32 requires "wherein the laminating layer forms the front surface of the label structure and the base panel forms the back surface of the label structure, and wherein the first leaflet does not extend forwardly of the second leaflet when in a closed condition". Again, the nested pamphlet panels of Rankin do not disclose this relationship.

Claim 33 requires "wherein the first fold of the first leaflet is transversely spaced from the second fold of the second leaflet". Clearly, the Rankin patent could only lead one of ordinary skill in the art away from this requirement, and the Rankin patent teaches one of ordinary skill in the art to staple the pamphlets together in a manner that would prevent *any* spacing of the folds from each other. Additionally, the Office Action did not allege that the Rankin patent shows transverse spacing of the folds in the pamphlet panels of the Rankin patent, and therefore claim 33 is submitted to be allowable.

Withdrawal of the §102(b) rejection of claims 1 through 7, 9 and 31 through 33 is therefore respectfully requested.

**Paragraph 4 of the Office Action**

Claims 27, 28 and 29 have been rejected under 35 U.S.C. §102(b) as being anticipated by Rankin et al (6,447,862). (It is not understood why a separate §102(b) rejection based upon Rankin was asserted for these claims.)

Claim 27 requires "a second leaflet being positioned forward of the first leaflet such that substantially an entirety of the first leaflet is

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

positioned between the second leaflet and the base panel when the first and second leaflets are in a closed condition".

Further, claim 28 requires "a second leaflet being positioned forward of the first leaflet such that the first leaflet is positioned between the second leaflet and the base panel when the first and second leaflets are in a closed condition" and "wherein the first fold of the first leaflet is spaced from the second fold of the second leaflet".

Also, claim 29 requires "wherein the second leaflet is stacked on the first leaflet when the first leaflet and the second leaflet are in a closed condition".

It is submitted that the Rankin patent does not disclose or suggest the relationships between the first and second leaflets that are set forth in these claims. Rankin discloses a nested relationship between the pamphlet panels, which is contrary to the requirements of these claims.

Withdrawal of the §102(b) rejection of claims 27, 28 and 29 is therefore respectfully requested.

**Paragraph 5 of the Office Action**

Claim 8 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Rankin et al in view of Grosskopf et al.

Claim 8, particularly as amended, requires "wherein the front face of the base panel has first and second areas, indicia being marked on the first area of the front face of the base panel, indicia being marked on the second area of the front face of the base panel, the first and second leaflets overlying the second area of the front face and not overlying the first area of the front face".

Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

The Grosskopf patent shows printing of a lot and expiration date on a tab 120 that is positioned next to a leaflet 130 but the tab 120 does not extend below the leaflet 130. Since the Rankin patent shows a base 12 that not only extends outwardly from the pamphlet, but also extends below the pamphlet panels as well. It is submitted that one of ordinary skill in the art, considering the Rankin patent, would not be motivated to place printing on the exposed portions of the base 12 by the Grosskopf patent, which shows lot and date information on a separate "tab" that is not any part of a base that extends below the pamphlet panels of Rankin.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Rankin and Grosskopf set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claim 8, and therefore claim 8 is submitted to be in condition for allowance.

Withdrawal of the §103(a) rejection of claim 8 is therefore respectfully requested.

**Paragraph 6 of the Office Action**

Claim 26 has been allowed.

**Paragraph 8 of the Office Action:**

Claim 30 has been indicated as being allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in the Office Action.

It is believed that the above clarifications to the language of claim 30 overcome the objections to the language of claim 30, and that claim 30 is in condition for allowance.


Appln. No. 09/931,336  
Amendment dated December 13, 2004  
Reply to Office Action mailed August 11, 2004

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

LEONARD & PROEHL, Prof. L.L.C.

By  Date: DEC. 13, 2004  
Jeffrey A. Proehl (Reg. No. 35,987)  
LEONARD & PROEHL, Prof. L.L.C.  
3500 South First Avenue Circle, Suite 250  
Sioux Falls, SD 57105-5807  
(605)339-2028 FAX (605)336-1931